

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

LESA L OUIMET
Claimant

APPEAL NO. 07A-UI-02157-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AEC ENTERPRISES INC
Employer

**OC: 02/11/07 R: 03
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Lesa Ouimet filed an appeal from a representative's decision dated February 23, 2007, reference 01, which denied benefits based on her separation from AEC Enterprises, Inc. After due notice was issued, a hearing was held by telephone on March 20, 2007. Ms. Ouimet participated personally and Exhibits A, B, and C were admitted on her behalf. The employer participated by Ron Goering, Assistant Operations Manager. Exhibits One and Two were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Ms. Ouimet was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Ouimet was employed by AEC Enterprises, Inc. from August 29, 2006 until February 9, 2007. She worked full time in shipping, receiving, and parts inventory. She was discharged from the employment.

On November 3, Ms. Ouimet received a verbal warning for leaving the workplace on October 20 without notifying a manager. She left for lunch and did not return. She went to lunch with a coworker and took the remainder of the day off because the coworker was distraught. The warning contains a space for the employee to indicate agreement or disagreement with the employer's statement and a space for the employee to write his or her own comments regarding the matter. Ms. Ouimet indicated she agreed with the employer's statement. She did not write any comments indicating a different version of the events of October 20.

The employer met with Ms. Ouimet the morning of February 7 to discuss issues relating to her job duties and personnel working under her. The employer had asked another employee, Rick, to assist in the shipping department and wanted Ms. Ouimet to provide him with written materials concerning the job. The employer wanted her to give Rick e-mails that had been sent to her regarding the job. Ms. Ouimet indicated that she would not turn over the materials and

that Rick would have to learn the job the same way she did. Ms. Ouimet also raised an objection to other individuals giving instruction to members of her team. She was told that it was sometimes necessary for others to give instructions since she arrived at work at least two hours after many of her team members.

On the afternoon of February 7, Ms. Ouimet questioned Ron Goering as to what her team members may have said. She then advised Mr. Goering that she would be leaving after she completed some tasks but did not indicate why she was leaving. She was not told she could not leave. She did not report for work or contact the employer on February 8. When questioned about the absence on February 9, Ms. Ouimet indicated that she had needed to get things together. She did not indicate that the absence was due to illness. She was discharged the same day.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The decision to discharge Ms. Ouimet was prompted by the fact that she left early on February 7 and was absent without notice on February 8. She notified the employer that she was leaving on February 7 and was not told that she could not leave. Therefore, the absence the afternoon of February 7 was not an act of misconduct. The evidence does not establish any good cause for the failure to give notice of the February 8 absence. Ms. Ouimet testified that she was absent on February 8 due to a head cold. She further testified that she did not have a land line phone and that the batteries in her cell phone were not charged. Given that she only had a head cold, the administrative law judge believes she could have driven to a pay telephone to call the employer. Furthermore, she did not cite illness as the reason for the absence when questioned by the employer on February 9.

Ms. Ouimet knew that unreported absences were contrary to the employer's expectations. She had received a warning on November 3 for not reporting her absence the afternoon of October 20. Although she contended that she called to report the absence the afternoon of October 20, the administrative law judge is not persuaded. She did not dispute the employer's version of the facts on the warning form. In fact, she circled the response indicating she agreed with the employer's statement that she had not given notice of the absence. Moreover, she did not indicate any contrary facts on the warning form even though there is a space for her to do so. She signed the warning form.

The warning of November 3 should have been sufficient to put Ms. Ouimet on notice that all absences had to be reported. In spite of the warning, she failed to contact the employer to report her absence of February 8. As a team leader, Ms. Ouimet was expected to set the standard for those working under her. Missing work without notifying the employer set a bad example for her subordinates.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that Ms. Ouimet's two periods of unreported absence constituted a substantial disregard of the standards the employer had the right to expect from a team leader or a manager. Accordingly, benefits are denied.

DECISION:

The representative's decision dated February 23, 2007, reference 01, is hereby affirmed. Ms. Ouimet was discharged for disqualifying misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs